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OFFICE OF PETITIONS

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In re Application of  
Healy et al.  
Application No. 10/665,943  
Deposited: September 19, 2003  
Attorney Docket No. 42133-00009USPT

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: DECISION GRANTING  
: PETITION  
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This is a decision in response to the petition under 37 CFR 1.182, filed July 26, 2004, requesting in effect, that a "Notice of Incomplete Nonprovisional Application" ("Notice") mailed May 26, 2004, be withdrawn.

The application was deposited on September 19, 2003. However, on May 26, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application" advising applicants that the application papers had **not** been accorded a filing date because the application was deposited without drawings.

Petitioner acknowledges that the drawings were inadvertently omitted from the application as submitted on September 19, 2003.

As stated in MPEP 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence). The same practice has been followed in composition applications.

Moreover, MPEP 601.01(f) states that a nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description.

A review of the official file reveals that the application includes a composition claim. In view of the above, the "Notice" mailed May 26, 2004 was mailed in error and is hereby withdrawn.

Accordingly, the petition is Granted. Deposit account 10-0447 will be credited the \$130.00 petition fee.

In view of the incorporation by reference of the prior application, figures 1-5b are not new matter, if they were part of the disclosure of the prior application.

The Office acknowledges receipt of the preliminary amendment requesting entry of figures 1-5b.

The application will be processed with only the papers present on filing and is hereby accorded a filing date of September 19, 2003, without drawings as part of the original disclosure

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.



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